

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DARLA CONKLIN)	
Claimant)	
VS.)	
)	Docket No. 251,153
SPARTECH CORPORATION)	
Respondent)	
AND)	
)	
TRAVELERS INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appealed the February 4, 2002 Order entered by Administrative Law Judge Bryce D. Benedict. The Board placed this appeal on its summary calendar. Stacy Parkinson of Olathe, Kansas, was appointed Board Member pro tem to serve in place of Board Member David A. Shufelt, who recused himself from this claim.

ISSUES

This is a claim for a series of accidents that allegedly occurred from May 25, 1999, through October 13, 1999. In December 2001, claimant and claimant's counsel requested that Administrative Law Judge Bruce E. Moore be recused from this claim and all other matters involving claimant's attorney.

Through a series of assignments, this claim was assigned to Administrative Law Judge Bryce D. Benedict to address the recusal issue. By Order dated February 4, 2002, Judge Benedict denied the requests for recusal. Judge Benedict concluded that the allegations made against Judge Moore, if true, failed to establish that Judge Moore would not afford claimant an impartial hearing or claimant's attorney fair treatment in future proceedings.

Claimant and claimant's attorney contend Judge Benedict erred. In their brief to the Board dated March 21, 2002, they argue the facts cited in the affidavits filed in this claim would cause a reasonable person to doubt Judge Moore's impartiality in dealings with

claimant's attorney. Accordingly, claimant and claimant's attorney request the Board to issue a blanket recusal to prevent Judge Moore from adjudicating any proceedings in which claimant's attorney appears.

Conversely, respondent and its insurance carrier contend this claim was settled on February 28, 2002, and, therefore, the recusal request is moot. Accordingly, they request the Board grant them attorney fees for the time expended on the recusal issues since the settlement hearing.

The transcript from a February 28, 2002 settlement hearing between the parties was filed with the Division of Workers Compensation on March 11, 2002. At that hearing, claimant settled her claim against respondent and its insurance carrier for a lump sum, giving up any and all rights that she might have against respondent and its insurance carrier in this claim.

The issues before the Board on this appeal are:

1. Are the requests for recusal made by claimant and claimant's attorney moot due to the parties' February 28, 2002 settlement hearing?
2. Are respondent and its insurance carrier entitled to an award for attorney fees?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire file, the Board finds and concludes:

The request for an order preventing Judge Moore from participating in this claim is moot. On February 28, 2002, claimant entered into a lump sum settlement, giving up any and all claims against respondent and its insurance carrier for this accident.

Respondent and its insurance carrier's request for attorney fees is denied as the Board is unaware of any authority contained in the Workers Compensation Act which allows the Board to assess attorney fees against claimant or her attorney under these circumstances.

WHEREFORE, the Board dismisses this appeal.

IT IS SO ORDERED.

Dated this ____ day of June 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant
 Jeffrey E. King, Attorney for Respondent and its Insurance Carrier
 Bryce D. Benedict, Administrative Law Judge
 Philip S. Harness, Workers Compensation Director